

Without finding a specific date of accident, the Assistant Director found claimant sustained personal injury by accident arising out of and in the course of his employment with respondent. Claimant initially alleged a series of accidents beginning the Spring of 1997 through April 1, 1998. This was orally amended at the preliminary hearing to allege a series through April 24, 1998, the last day claimant worked for respondent. In Claimant's Brief to the Appeals Board it is alleged that February 17, 1998 would also be an appropriate date of accident for this claim because that is the date Dr. Joseph E. Mumford recommended temporary work restrictions. Dr. Mumford also recommended that claimant undergo an arthrogram on his right shoulder because he suspected a rotator cuff tear. The arthrogram was never performed, however, because the workers compensation insurance carrier refused to authorize it.

In this case, claimant left his job with respondent apparently for reasons unrelated to his injury. He immediately went to work for another company and has worked continuously without accommodations. Respondent and its insurance carrier contend they are not responsible for providing medical treatment for claimant's injury because, as a matter of law, an "accident" has not yet occurred. Citing Berry,<sup>1</sup> Condon,<sup>2</sup> and Alberty,<sup>3</sup> respondent contends that an accident date cannot be established, and hence an accident has not occurred, until an injured worker either leaves work because of his injury or work restrictions are implemented.

The Appeals Board has rejected this argument in the past<sup>4</sup> and continues to do so. In Berry, Condon, and Alberty, the Court of Appeals established certain "bright line rules" for determining a single date of accident in repetitive trauma cases in order to have a date from which permanent partial disability benefits would commence and for assigning liability for those benefits. The Court did not say that an injured worker could not receive preliminary benefits of medical treatment and/or temporary total disability compensation before that date.

In this case, the insurance carrier seeks to be rewarded for refusing to authorize medical treatment while claimant was in respondent's employ. The Appeals Board does not believe this is what the Court of Appeals intended.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the June 24, 1998, Order by Assistant Director Brad E. Avery should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Jeffrey S. Austin, Overland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994)

<sup>2</sup> Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995)

<sup>3</sup> Alberty v. Excel Corporation, 24 Kan. App. 2d 678, 951 P.2d 967, *rev. denied* 264 Kan. \_\_\_\_ (1998)

<sup>4</sup> See, e.g., Rommel v. The Boeing Company, Docket No. 170,813 (July 1998); Cole v. The Boeing Company, Docket No. 192,352 (June 1998); Sutton v. Norland Plastics, Inc. and Teleflex, Inc., Docket Nos. 183,710 and 223,862 (June 1998)